

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 2:16-CV-02124 (VEB)

LINDA WOODS,

Plaintiff,

vs.

NANCY BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In June of 2014, Plaintiff Linda Woods applied for Supplemental Security Income benefits under the Social Security Act. The Commissioner of Social Security denied the application.¹

¹ On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

1 Plaintiff, by and through her attorneys, Potter Cohen & Samulon, Eliot R.
2 Samulon, Esq., of counsel, commenced this action seeking judicial review of the
3 Commissioner's denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

4 The parties consented to the jurisdiction of a United States Magistrate Judge.
5 (Docket No. 11, 12). On March 27, 2017, this case was referred to the undersigned
6 pursuant to General Order 05-07. (Docket No. 23).

7 8 **II. BACKGROUND**

9 Plaintiff applied for benefits on June 30, 2014, alleging disability beginning
10 February 15, 2003. (T at 19).² The application was denied initially and on
11 reconsideration. Plaintiff requested a hearing before an Administrative Law Judge
12 ("ALJ").

13 On September 23, 2015, a hearing was held before ALJ Ken H. Chu. (T at
14 39). Plaintiff appeared with her attorney and testified. (T at 50-71). The ALJ also
15 received testimony from Valerie Williams, a vocational expert. (T at 73-81).

16 On October 5, 2015, the ALJ issued a written decision denying the application
17 for benefits. (T at 16-38). The ALJ's decision became the Commissioner's final
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19 ² Citations to ("T") refer to the administrative record at Docket No. 16.

1 decision on March 2, 2016, when the Appeals Council denied Plaintiff's request for
2 review. (T at 1-6).

3 On March 29, 2016, Plaintiff, acting by and through her counsel, filed this
4 action seeking judicial review of the Commissioner's denial of benefits. (Docket No.
5 1). The Commissioner interposed an Answer on August 25, 2016. (Docket No. 16).
6 Plaintiff filed a supporting memorandum on October 28, 2016 (Docket No. 19); the
7 Commissioner filed an opposition memorandum on November 28, 2016. (Docket
8 No. 20). Plaintiff filed a reply memorandum on December 9, 2016. (Docket No.
9 22).

10 After reviewing the pleadings, the parties' memoranda, and administrative
11 record, this Court finds that the Commissioner's decision must be reversed and this
12 case remanded for calculation of benefits.

14 **III. DISCUSSION**

15 **A. Sequential Evaluation Process**

16 The Social Security Act ("the Act") defines disability as the "inability to
17 engage in any substantial gainful activity by reason of any medically determinable
18 physical or mental impairment which can be expected to result in death or which has
19 lasted or can be expected to last for a continuous period of not less than twelve

1 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
2 claimant shall be determined to be under a disability only if any impairments are of
3 such severity that he or she is not only unable to do previous work but cannot,
4 considering his or her age, education and work experiences, engage in any other
5 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
6 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
7 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

8 The Commissioner has established a five-step sequential evaluation process
9 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
10 one determines if the person is engaged in substantial gainful activities. If so,
11 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
12 decision maker proceeds to step two, which determines whether the claimant has a
13 medically severe impairment or combination of impairments. 20 C.F.R. §§
14 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

15 If the claimant does not have a severe impairment or combination of
16 impairments, the disability claim is denied. If the impairment is severe, the
17 evaluation proceeds to the third step, which compares the claimant’s impairment(s)
18 with a number of listed impairments acknowledged by the Commissioner to be so
19 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
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1 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
2 equals one of the listed impairments, the claimant is conclusively presumed to be
3 disabled. If the impairment is not one conclusively presumed to be disabling, the
4 evaluation proceeds to the fourth step, which determines whether the impairment
5 prevents the claimant from performing work which was performed in the past. If the
6 claimant is able to perform previous work, he or she is deemed not disabled. 20
7 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual
8 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
9 work, the fifth and final step in the process determines whether he or she is able to
10 perform other work in the national economy in view of his or her residual functional
11 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
12 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

13 The initial burden of proof rests upon the claimant to establish a *prima facie*
14 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
15 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
16 is met once the claimant establishes that a mental or physical impairment prevents
17 the performance of previous work. The burden then shifts, at step five, to the
18 Commissioner to show that (1) plaintiff can perform other substantial gainful
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1 activity and (2) a “significant number of jobs exist in the national economy” that the
2 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

3 4 **B. Standard of Review**

5 Congress has provided a limited scope of judicial review of a Commissioner’s
6 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
7 made through an ALJ, when the determination is not based on legal error and is
8 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
9 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

10 “The [Commissioner’s] determination that a plaintiff is not disabled will be
11 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
12 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
13 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
14 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
15 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
16 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
17 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
18 conclusions as the [Commissioner] may reasonably draw from the evidence” will
19 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,

1 the Court considers the record as a whole, not just the evidence supporting the
2 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
3 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

4 It is the role of the Commissioner, not this Court, to resolve conflicts in
5 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
6 interpretation, the Court may not substitute its judgment for that of the
7 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
8 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
9 set aside if the proper legal standards were not applied in weighing the evidence and
10 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
11 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
12 administrative findings, or if there is conflicting evidence that will support a finding
13 of either disability or non-disability, the finding of the Commissioner is conclusive.
14 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

15 **C. Commissioner's Decision**

16 The ALJ determined that Plaintiff had not engaged in substantial gainful
17 activity since June 30, 2014, the application date. (T at 22). The ALJ found that
18 Plaintiff's degenerative disc disease of the lumbar spine; residuals from gunshot
19 wound; diabetes mellitus; obesity; hypertension; anxiety disorder; major depressive

1 disorder with psychotic features; and post-traumatic stress disorder were “severe”
2 impairments under the Act. (Tr. 22).

3 However, the ALJ concluded that Plaintiff did not have an impairment or
4 combination of impairments that met or medically equaled one of the impairments
5 set forth in the Listings. (T at 23).

6 The ALJ determined that Plaintiff retained the residual functional capacity
7 (“RFC”) to perform a range of medium work, as defined in 20 CFR § 416.967 (c), as
8 follows: she can lift/carry 50 pounds occasionally and 25 pounds frequently; she can
9 stand/walk for 6 hours in an 8-hour workday and sit for 6 hours in 8-hour workday;
10 she is limited to simple, repetitive tasks with no public contact, no more than
11 frequent contact with peers, and no requirement of literacy. (T at 25).

12 The ALJ noted that Plaintiff had no past relevant work. (T at 31). Considering
13 Plaintiff’s age (48 years old on the application date), illiteracy, ability to
14 communicate in English, work experience, and RFC, the ALJ determined that there
15 were jobs that exist in significant numbers in the national economy that Plaintiff can
16 perform. (T at 32).

17 Accordingly, the ALJ determined that Plaintiff was not disabled within the
18 meaning of the Social Security Act between June 30, 2014 (the application date) and
19 October 8, 2015 (the date of the decision) and was therefore not entitled to benefits.

1 (T at 33). As noted above, the ALJ's decision became the Commissioner's final
2 decision when the Appeals Council denied Plaintiff's request for review. (T at 1-6).

3 **D. Disputed Issues**

4 Plaintiff offers three (3) arguments in support of her claim that the
5 Commissioner's decision should be reversed. First, she contends that the ALJ's
6 consideration of the medical opinion evidence was flawed. Second, she challenges
7 the ALJ's credibility determination. Third, Plaintiff argues that the ALJ did not
8 properly address lay witness evidence. This Court will address each argument in
9 turn.

10 **IV. ANALYSIS**

11 **A. Medical Opinion Evidence**

12 In disability proceedings, a treating physician's opinion carries more weight
13 than an examining physician's opinion, and an examining physician's opinion is
14 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,
15 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
16 1995). If the treating or examining physician's opinions are not contradicted, they
17 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If
18 contradicted, the opinion can only be rejected for "specific" and "legitimate" reasons
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1 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d
2 1035, 1043 (9th Cir. 1995).

3 An ALJ satisfies the “substantial evidence” requirement by “setting out a
4 detailed and thorough summary of the facts and conflicting clinical evidence, stating
5 his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995,
6 1012 (9th Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).
7 “The ALJ must do more than state conclusions. He must set forth his own
8 interpretations and explain why they, rather than the doctors’, are correct.” *Id.*

9 In this case, Dr. Anna Xiao, Plaintiff’s treating psychiatrist, completed a
10 Mental Disorders Questionnaire in September of 2015. Dr. Xiao opined that
11 Plaintiff had marked impairments in activities of daily living and social functioning
12 due to her mental disorders. (T at 586). She likewise described Plaintiff as having
13 diminished abilities to sustain concentration and complete tasks. (T at 586). Dr.
14 Xiao believed Plaintiff would have significant difficulty performing work-related
15 activities on a daily basis. (T at 587).

16 Dr. Xiao diagnosed major depressive disorder (recurrent, severe with
17 psychotic features) and post-traumatic stress disorder. (T at 588). She assigned a
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1 Global Assessment of Functioning (“GAF”) score³ of 52 (T at 588), which is
2 indicative of moderate symptoms or difficulty in social, occupational or educational
3 functioning. *Metcalfe v. Astrue*, No. EDCV 07-1039, 2008 US. Dist. LEXIS 83095,
4 at *9 (Cal. CD Sep’t 29, 2008). She opined that Plaintiff’s condition met the
5 impairment set forth under § 12.04 of the Social Security Listings. (T at 589).

6 Dr. Xiao described Plaintiff’s mental health impairments as “severe and
7 persistent,” and opined that Plaintiff could not be expected to complete a normal
8 workday or workweek. (T at 587). She believed that Plaintiff’s auditory and visual
9 hallucinations would negatively impact her ability to function in a work setting and
10 that her impulsive decision making would make it difficult to make even simple
11 work-related decisions. (T at 587-88).

12 Dr. Amber Ruddock, a clinical psychologist, performed a consultative
13 examination in August of 2014. Dr. Ruddock opined that Plaintiff did not have any
14 diagnosable mental impairments and assigned a GAF of 65 (T at 469). “A GAF of
15 61-70 indicates ‘[s]ome mild symptoms (e.g., depressed mood and mild insomnia) or
16 some difficulty in social, occupational, or school functioning (e.g., occasional
17 truancy, or theft within the household), but generally functioning pretty well, has

18 ³ “A GAF score is a rough estimate of an individual's psychological, social, and occupational
19 functioning used to reflect the individual's need for treatment.” *Vargas v. Lambert*, 159 F.3d 1161,
1164 n.2 (9th Cir. 1998).

1 some meaningful interpersonal relationships.” *Tagger v. Astrue*, 536 F. Supp. 2d
2 1170, 1174 n.8 (C.D. Cal. 2008).

3 Dr. Ruddock concluded that Plaintiff would have essentially no limitations to
4 performing work-related activities, including complex tasks, other than a mild
5 difficulty in interacting appropriately with supervisors. (T at 469-70).

6 In January of 2015, Dr. Helen Patterson, a non-examining State Agency
7 review consultant, opined that Plaintiff retained adequate mental capacity to sustain
8 simple work-like activities in a non-public work setting. (T at 231).

9 The ALJ gave “partial weight” to the opinions of Dr. Ruddock and Dr.
10 Patterson, noting that evidence submitted after these opinions supported a finding of
11 more significant mental health limitations, which the ALJ incorporated into the RFC
12 determination (i.e. limitation to simple, repetitive tasks with no public contact and
13 no more than frequent peer contact). (T at 25, 31). Nevertheless, the ALJ concluded
14 that the opinions of the consultative examiner and State Agency review consultant
15 provided support for his overall conclusion that Plaintiff’s mental health
16 impairments were not disabling. (T at 31).

17 The ALJ assigned “little weight” to Dr. Xiao’s opinions, finding theme “quite
18 conclusory” and inconsistent with the treatment record. (T at 31). The ALJ believed
19 Dr. Xiao relied too heavily on Plaintiff’s subjective reports. (T at 31).

1 For the following reasons, this Court finds the ALJ's assessment of the
2 medical opinion evidence in error and not supported by substantial evidence.

3 First, Dr. Xiao's September 2015 questionnaire (which the ALJ incorrectly
4 identifies as having been written in September 2013) cannot reasonably be
5 characterized as "conclusory."

6 To the contrary, the report, which spans eight (8) pages of single-spaced type,
7 includes clinical observations; a detailed description of Plaintiff's complaints and
8 symptoms (e.g. dysphoric and anxious mood, poor concentration, low energy, crying
9 spells, auditory and visual hallucination, suicidal ideation, suicide attempts); a
10 lengthy summary of Plaintiff's medical, family, social, educational, employment,
11 and environmental history; the results of a recent mental status examination (which
12 indicated significant difficulties with concentration/memory, limited fund of
13 knowledge, below average intelligence, dysphoric mood, constricted affect, auditory
14 hallucinations, paranoid delusions); an assessment of Plaintiff's current level of
15 functioning; a detailed diagnosis and GAF score; and a statement regarding
16 Plaintiff's prognosis. (T at 582-89).

17 It is difficult for this Court to understand how the ALJ could have considered
18 Dr. Xiao's highly-detailed, extremely thorough report "conclusory." It is, indeed,
19 difficult to imagine what additional information or detail the ALJ would have

1 expected to find in a report of this type. This Court recognizes its duty of deference
2 to the administrative findings, but no reasonable reading of the evidence can support
3 the ALJ's decision to characterize Dr. Xiao's report as "conclusory."

4 Second, the ALJ characterized the treatment record as "mostly unremarkable"
5 and discounted Dr. Xiao's opinion on that basis. However, the ALJ's conclusion is
6 not consistent with a reasonable reading of the evidence. Treatment notes described
7 Plaintiff as "down most of the time," "forgetful," experiencing auditory
8 hallucinations (T at 494), homeless and living in the streets (T at 498), and
9 experiencing visual hallucinations, anxious, irritable, chronic delusions (T at 502-
10 504).

11 The ALJ also found that Plaintiff's mental health impairments appeared to be
12 "amendable with conservative treatment [and] medication." (T at 28). Plaintiff's
13 chronic homelessness and consistent symptoms (including suicide attempts)
14 certainly undermine this conclusion. Moreover, Dr. Xiao explained that stress
15 tended to exacerbate Plaintiff's mental health symptoms. (T at 586-87). Stress is
16 "highly individualized" and a person with a mental health impairment "may have
17 difficulty meeting the requirements of even so-called 'low-stress' jobs." SSR 85-15.
18 As such, the issue of stress must be carefully considered and "[a]ny impairment-
19 related limitations created by an individual's response to demands of work . . . must

1 be reflected in the RFC assessment.” *Id.*; see also *Perkins v. Astrue*, No. CV 12-
2 0634, 2012 U.S. Dist. LEXIS 144871, at *5 (C.D.Ca. Oct. 5, 2012).

3 In addition, individuals with chronic mental health problems “commonly have
4 their lives structured to minimize stress and reduce their signs and symptoms.”
5 *Courneya v. Colvin*, No. CV-12-5044, 2013 U.S. Dist. LEXIS 161332, at *13-14
6 (E.D.W.A. Nov. 12, 2013)(quoting 20 C.F.R. Pt. 404, Subp't P, App. 1 § 12.00(D)).
7 Here, the ALJ erred in characterizing the treatment record as “unremarkable” and
8 then compounded the error by failing to recognize the impact of stress, such that
9 even if Plaintiff’s symptoms could somehow *arguably* be characterized as “well-
10 managed,” the impact of adding consistent work stress would still need to be
11 accounted for. The ALJ did not give this adequate consideration.

12 Third, the ALJ’s reliance on the opinions of the consultative examiner and
13 State Agency review physician is not sufficient to sustain the decision. As the ALJ
14 recognized, Dr. Ruddock (the consultative examiner) did not have the opportunity to
15 consider Dr. Xiao’s assessment, which was provided after the consultative
16 examination. (T at 31).

17 In addition, Dr. Ruddock’s report is unusual in that the clinical findings are
18 quite inconsistent with the overall conclusions. For example, Dr. Ruddock noted
19 that Plaintiff was “very difficult to engage with,” “made no eye contact,” became
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1 “easily irritated,” demonstrated poorly organized thoughts and below average
2 intellectual functioning, poor memory/attention/concentration, and below average
3 insight and judgment, with testing results placing Plaintiff in the moderate mental
4 retardation range. (T at 468).

5 However, notwithstanding these very significant clinical findings, Dr.
6 Ruddock assessed mild or no difficulties with regard to Plaintiff’s ability to perform
7 basic work activities. (T at 469-70). Dr. Ruddock does not provide an adequate
8 explanation for this discrepancy. The subtext, as far as one can tell, appears to be
9 that Dr. Ruddock believed Plaintiff’s lack of cooperation and inappropriate behavior
10 during the interview were feigned to some material degree. However, Dr. Ruddock
11 did not characterize Plaintiff as a malingerer or offer any explanation to support her
12 assessment of Plaintiff’s behavior. In any event, the consultative examiner’s opinion,
13 which did not account for the treating psychiatrist’s detailed assessment and which
14 does not provide a credible basis for its ultimate conclusions, cannot constitute
15 substantial evidence sufficient to sustain the ALJ’s decision.

16 Dr. Patterson (the State Agency review consultant) also rendered her opinion
17 before Dr. Xaio’s assessment and never examined Plaintiff. This assessment can
18 also thus not constitute substantial evidence. *See Lester v. Chater*, 81 F.3d 821, 831
19 (9th Cir. 1995)(citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th Cir. 1990)).

1 In light of the foregoing, this Court finds the ALJ's consideration of Dr.
2 Xaio's assessment flawed and concludes that the ALJ's assessment of Plaintiff's
3 ability to perform the mental demands of basic work activity is not supported by
4 substantial evidence.

5 **B. Credibility**

6 A claimant's subjective complaints concerning his or her limitations are an
7 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
8 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's findings with regard to the
9 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*
10 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
11 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
12 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General
13 findings are insufficient: rather the ALJ must identify what testimony is not credible
14 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;
15 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

16 In this case, Plaintiff testified as follows: She attended school through the
17 eleventh grade and does not have high school diploma or GED. She was placed in
18 special education classes. (T at 50). She has not worked for more than 10 years
19 because of back pain (related to a gunshot wound), anxiety attacks, and depression.

1 (T at 53). She has had difficulty managing her prescription medications. (T at 55-
2 57). Auditory and visual hallucinations are an issue. (T at 57-58). She was
3 homeless at the time of the hearing and had been for some time. (T at 59). She can
4 walk for 20 minutes before needing to take a break. Prolonged sitting is also
5 painful. (T at 59-60). She is irritable and difficult to be around. (T at 61). Anger
6 management is an issue and interpersonal issues are frequent. (T at 62). She cannot
7 read. (T at 64).

8 The ALJ concluded that Plaintiff's medically determinable impairments could
9 reasonably be expected to cause the alleged symptoms, but that her statements
10 regarding the intensity, persistence, and limiting effects of those symptoms were not
11 entirely credible. (T at 26). For the reasons that follow, this Court finds the ALJ's
12 credibility assessment flawed and not supported by substantial evidence.

13 First, the ALJ found that Plaintiff's treatment record did not support her
14 allegations of disabling mental health symptoms. (T at 28). An ALJ may consider
15 the lack of supporting objective evidence when analyzing credibility. *Burch v.*
16 *Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). However, "[t]he fact that a claimant's
17 testimony is not fully corroborated by the objective medical findings, in and of itself,
18 is not a clear and convincing reason for rejecting it." *Vertigan v. Halter*, 260 F.3d
19 1044, 1049 (9th Cir. 2001); *see also Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883

1 (9th Cir. 2006) (“While an ALJ may find testimony not credible in part or in whole,
2 he or she may not disregard it solely because it is not substantiated affirmatively by
3 objective medical evidence.”); *Cotton v. Bowen*, 799 F.2d 1403, 1407 (9th Cir.
4 1986) (“It is improper as a matter of law to discredit excess pain testimony solely on
5 the ground that it is not fully corroborated by objective medical findings.”).

6 Here, the ALJ concluded that Plaintiff’s symptoms were “amendable with
7 conservative treatment, medication” and, thus, discounted the credibility of her
8 complaints of disabling symptoms. (T at 28). As discussed above, the ALJ’s
9 conclusion is not based on any reasonable reading of the record.

10 Dr. Xiao, Plaintiff’s treating psychiatrist, opined that Plaintiff had marked
11 impairments in activities of daily living and social functioning due to her mental
12 disorders. (T at 586). She further opined Plaintiff would have significant difficulty
13 performing work-related activities on a daily basis. (T at 587). Treatment notes
14 described Plaintiff as “down most of the time,” “forgetful,” experiencing auditory
15 hallucinations (T at 494), homeless and living in the streets (T at 498), and
16 experiencing visual hallucinations, anxious, irritable, chronic delusions (T at 502-
17 504).

18 Moreover, the ALJ’s conclusion that Plaintiff’s mental health impairments
19 were “amendable” with treatment did not adequately account for the impact that
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1 stress would play in exacerbating those impairments. Indeed, Dr. Xiao explained
2 that stress tended to exacerbate Plaintiff's mental health symptoms. (T at 586-87).

3 Second, the ALJ faulted Plaintiff for non-compliance with medication and
4 medical appointments and for failing to see "consistent psychotherapy." (T at 28-
5 29). This was error under SSR 96-7p. Under that ruling, an ALJ must not draw an
6 adverse inference from a claimant's failure to seek or pursue treatment "without first
7 considering any explanations that the individual may provide, or other information
8 in the case record, that may explain infrequent or irregular medical visits or failure to
9 seek medical treatment." *Id.*; see also *Dean v. Astrue*, No. CV-08-3042, 2009 U.S.
10 Dist. LEXIS 62789, at *14-15 (E.D. Wash. July 22, 2009)(noting that "the SSR
11 regulations direct the ALJ to question a claimant at the administrative hearing to
12 determine whether there are good reasons for not pursuing medical treatment in a
13 consistent manner").

14 An ALJ's duty to develop the record is significant because there are valid
15 reasons why a claimant might not follow a treatment recommendation. For example,
16 "financial concerns [might] prevent the claimant from seeking treatment [or] . . .
17 the claimant [may] structure[] his daily activities so as to minimize symptoms to a
18 tolerable level or eliminate them entirely." *Id.*

1 Here, there are important facts (including persistent homelessness, suicidal
2 ideation and attempts, visually and auditory hallucinations) that provide critical
3 context for understanding Plaintiff's periodic difficulties maintaining her medication
4 regimen and inability to maintain consistent treatment. Dr. Xiao specifically noted
5 that Plaintiff's symptoms impacted her ability to keep scheduled medical
6 appointments. (T at 588).

7 The ALJ did not give adequate consideration to these facts. Further, as a
8 general matter, "it is a questionable practice to chastise one with a mental
9 impairment for the exercise of poor judgment in seeking rehabilitation." *Nguyen v.*
10 *Chater*, 100 F.3d 1462, 1465 (9th Cir.1996)(quoting *Blankenship v. Bowen*, 874
11 F.2d 1116, 1124 (6th Cir.1989)).

12 For the foregoing reasons, this Court finds that the ALJ's credibility
13 determination is not supported by substantial evidence and cannot be sustained.

14 **C. Lay Evidence**

15 "Testimony by a lay witness provides an important source of information
16 about a claimant's impairments, and an ALJ can reject it only by giving specific
17 reasons germane to each witness." *Regennitter v. Comm'r*, 166 F.3d 1294, 1298 (9th
18 Cir. 1999).

1 In this case, Katherine Kimbell, who described herself as Plaintiff's friend,
2 completed a "Function Report- Adult – Third Party" in July of 2014. Ms. Kimbell
3 explained that she had known Plaintiff for over 10 years and took her to church on
4 Sundays. Ms. Kimbell stated that Plaintiff often has problems breathing. (T at 345).
5 She reported that Plaintiff, in general, had no problems related to personal care,
6 although she did need help with grooming and taking her medication. (T at 346-47).
7 Ms. Kimbell noted that Plaintiff was homeless at the time she completed her report
8 and Ms. Kimbell did not believe Plaintiff could handle money. (T at 348). She
9 described Plaintiff as "confused" and "depressed" and reported that Plaintiff did not
10 handle stress "well." (T at 350-51).

11 The ALJ gave "little weight" to Ms. Kimbell's statements, finding them "not
12 necessarily reflective of [Plaintiff's] maximal capacities." (T at 25). Given the
13 consistency between Ms. Kimbell's statements and Plaintiff's subjective complaints,
14 the treating psychiatrist's assessment, the treatment record, and this lay testimony,
15 the ALJ's decision cannot be sustained. Moreover, the ALJ's primary conclusion
16 from the lay report was that Plaintiff's ability to maintain a "friendship" with Ms.
17 Kimbell contradicted her claims of disabling social limitations. (T at 26). The ALJ
18 does not appear to have considered that Ms. Kimbell's "friendship" with Plaintiff
19 appears, based on the record, to be a religiously-motivated charitable endeavor on

1 Ms. Kimbell's part, as opposed to a truly reciprocal relationship indicative of social
2 skills. If the ALJ had considered this possibility and addressed it, this Court would
3 be bound to defer to that conclusion, provided it was supported by substantial
4 evidence. However, the ALJ gives no indication that he considered this
5 interpretation of Ms. Kimbell's relationship with Plaintiff.

6 **D. Remand**

7 In a case where the ALJ's determination is not supported by substantial
8 evidence or is tainted by legal error, the court may remand for additional
9 proceedings or an immediate award of benefits. Remand for additional proceedings
10 is proper where (1) outstanding issues must be resolved, and (2) it is not clear from
11 the record before the court that a claimant is disabled. *See Benecke v. Barnhart*, 379
12 F.3d 587, 593 (9th Cir. 2004).

13 In contrast, an award of benefits may be directed where the record has been
14 fully developed and where further administrative proceedings would serve no useful
15 purpose. *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Courts have
16 remanded for an award of benefits where (1) the ALJ has failed to provide legally
17 sufficient reasons for rejecting such evidence, (2) there are no outstanding issues that
18 must be resolved before a determination of disability can be made, and (3) it is clear
19 from the record that the ALJ would be required to find the claimant disabled were

1 such evidence credited. *Id.* (citing *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th
2 Cir.1989); *Swenson v. Sullivan*, 876 F.2d 683, 689 (9th Cir. 1989); *Varney v. Sec'y of*
3 *Health & Human Servs.*, 859 F.2d 1396, 1401 (9th Cir.1988)).

4 Here, Plaintiff's treating psychiatrist provided a highly-detailed assessment
5 indicative of severe, persistent, disabling mental health impairments. This
6 assessment is generally supported by the treatment record. For the reasons outlined
7 above, the ALJ failed to provide legally sufficient reasons for rejecting this
8 testimony and for discounting Plaintiff's credibility. There are no outstanding issues
9 that must be resolved before a determination of disability can be made. It is clear
10 from the record that the ALJ would be required to find Plaintiff disabled were the
11 improperly discounted evidence credited. As such, this Court finds that a remand
12 for calculation of benefits is the appropriate remedy.

13 **V. ORDERS**

14 IT IS THEREFORE ORDERED that:

15 Judgment be entered REVERSING the Commissioner's decision and
16 REMANDING this action for calculation of benefits, and it is further ORDERED
17 that

1 The Clerk of the Court shall file this Decision and Order, serve copies upon
2 counsel for the parties, and CLOSE this case, without prejudice to a timely
3 application for attorneys' fees and costs.

4 DATED this 11th day of September, 2017

5 /s/Victor E. Bianchini
6 VICTOR E. BIANCHINI
7 UNITED STATES MAGISTRATE JUDGE
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